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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D. R., et al., Persons Coming
Under the Juvenile Court Law.

B271379

(Los Angeles County
Super. Ct. No. CK75546)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KARINA R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Teresa T. Sullivan, Judge. Affirmed.

David A. Hamilton, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, R. Keith Davis, Assistant County Counsel, and
Brian Mahler, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Appellant Karina R. (mother) challenges the juvenile court's order removing her daughter, D.R., from her custody. Mother's sole contention is that the court erred by removing her daughter under Welfare & Institutions Code section 361, subdivision (c),¹ because D. did not reside with mother at the time the Department of Children and Family Services (department) filed its petition, and instead had been residing with the maternal grandmother for the previous two years. (See *In re Dakota J.* (2015) 242 Cal.App.4th 619, 629-630 (*Dakota J.*) [removal order reversed where child did not reside with parent for five years prior to department's involvement].) Although there is conflicting evidence in the record about D.'s place of residence, we conclude substantial evidence supports the court's implied finding that D. was residing with her mother at the time of removal. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND²

Mother is unmarried and has two children, D. (now age 9) and Scarlet (now age 2). The girls have different fathers. D.'s father was not involved in the proceedings below. Scarlet's father, R. H., maintained his relationship with mother following Scarlet's birth. However, that relationship was fraught with incidents of domestic violence which ultimately led to the department's involvement in this case.

¹ Further undesignated section references are to the Welfare & Institutions Code.

² Because Mother's sole argument on appeal relates to D.'s place of residence, we limit our discussion to the facts directly relevant to that narrow issue whenever possible.

On December 2, 2015, the department filed a petition under section 300, subdivisions (a) and (b), alleging both Scarlet and D. were at risk of harm due to domestic violence between mother and R. The petition further alleged mother had a history of drug use and was a current user of marijuana, rendering her unable to care for the girls. Both children were taken into custody by the department and the court ordered suitable placement. Initially, the girls were placed with a paternal aunt. The department later placed D. with the maternal grandmother, after discovering that D. attended school near the maternal grandmother's home.

On March 7, 2016, the court found jurisdiction over both children and sustained the following allegation under section 300, subdivision (b): "The children, [D.R.] and [Scarlet H.]'s mother, Karina [R.] and the mother's male companion, [R.H.] father of the child [Scarlet], have a history of engaging in violent altercations in the children's presence. On a prior occasion, [R.H.] pushed the mother onto the bed in the presence of the child, [D.]. On a prior occasion, [R.H.] struck the mother. On a prior occasion, [R.H.] kicked an item in the presence of the child, [D.]. On a prior occasion, the mother kicked [R.H.]. On 9/16/2014, [R.H.] repeatedly kicked the mother with [his] feet, inflicting marks to the mother's leg. [R.H.] repeatedly struck the mother's stomach with [his] hands, inflicting marks to the mother's stomach. On 9/16/2014, [R.H.] was arrested for Battery on Spouse. On 5/24/2014, [R.H.] struck the mother's face with [his] hands, inflicting bruising to the mother's face. The mother failed to protect the children in that the mother allowed [R.H.] to have unlimited access to the children. [R.H.] has a criminal conviction for Battery on Spouse. Such violent conduct on the part of [R.] and the mother, and the mother's failure to protect the children, endangers the children's physical health and

safety and places the children at risk of serious physical harm, damage, danger and failure to protect.”

During the course of its investigation, the department received conflicting information about D.’s living situation. Initially, it appeared that D. lived with mother. The department’s first contact with D. was on October 1, 2015, when a department social worker conducted a face-to-face home visit with mother at her home in Inglewood. At that time, mother had both D. and Scarlet in her custody. On November 18, 2015, prior to the filing of the petition, a social worker interviewed D. privately at her elementary school. D. told the social worker “that she lives with mother . . . , and baby sister [Scarlet].” When asked if [R.H.] also lived in the home, D. said he “stays most of the time but sometimes he goes home.” D. told the social worker she had seen R.H. the day before the interview, when she, Scarlet, mother and R.H. had gone to Denny’s restaurant and the park. D. described several instances of domestic violence she had witnessed between mother and R.H., including one that occurred just a few weeks earlier, on Halloween.

After the department filed the petition, however, mother told a social worker that D. had not been exposed to domestic violence incidents recently because D. had been living with the maternal grandmother for the previous two years. Mother stated she had taken D. out of her home in order to protect her from the violent relationship: “ ‘What I did, I took [D.] away from the situation and put her with my mom. I took care of that problem. I was able to protect [D.] in that way.’ ” For her part, D. told a social worker, during an interview which followed the filing of the petition, “ ‘I don’t actually stay with my mom. It’s more better [*sic*] to stay here (referring to maternal grandmother’s home) with my uncles. I just want to stay here with my grandma.’ ” In addition, D. told the social worker that “she has

lived with her grandmother since Kindergarten and she would like to remain in her home.”

Mother timely appealed from the court’s order regarding disposition.

CONTENTION

Mother’s sole contention on appeal is that the court erred by removing D. from her custody under section 361, subdivision (c), because D. was not residing with mother at the time the department filed the dependency petition or when the court issued the removal order.

DISCUSSION

A. Standard of review.

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ [Citation.]” [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1453.)

B. Substantial evidence supports the court's implied finding that D. lived with mother.

Section 361, subdivision (c)(1), provides in relevant part: “A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c).) Mother does not challenge the court’s jurisdictional finding, nor does she challenge the additional finding that D. would be at a substantial risk of harm if placed in mother’s custody. Instead, mother contends section 361, subdivision (c), does not authorize D.’s removal in this case because she was not residing with mother either when the department filed the petition, or three months later, when the court made its removal order.

Mother relies primarily upon this court’s decision in *Dakota J., supra*, 242 Cal.App.4th 619. There, the mother had three children: two sons, who had been living successfully with a relative for many years, and a daughter, who remained in mother’s custody. The juvenile court removed the daughter from mother’s custody; mother appeared to be suffering from severe mental illness characterized by hallucinations, paranoia, and delusions, and was unable to provide basic necessities of life for her daughter. The court went further, however, and also ordered removal of mother’s two sons. We reversed that portion of the removal order, based upon our conclusion that section 361, subdivision (c), according to its plain language, only authorizes

removal of a child from the parent or parents “*with whom the child resides at the time the petition was initiated.*” (§ 361, subd. (c), emphasis added; *Dakota J.*, *supra*, 242 Cal.App.4th at pp. 629-630.)

Mother contends *Dakota J.* is controlling here. Critical to mother’s argument is her factual assertion that D. was not residing with her at the time the department filed the petition or when the court later made the removal order, but rather had been living with the maternal grandmother for two years prior to the department’s involvement with the family. As described in detail *ante*, there is some evidence in the record to support mother’s assertion. In interviews conducted after the department filed the petition, mother suggested that D. had not been exposed to domestic violence incidents recently because she had been living with the maternal grandmother for the previous two years. D. also told a department social worker, after the petition was filed, that she had been living with the maternal grandmother for several years, and wanted to continue living there.

However, other evidence in the record—evidence which was obtained *before* the department filed its petition—supports the court’s finding that D. was residing with mother at the pertinent time.³ First, a department social worker met mother at her home, and both Scarlet and D. were with her during that visit. More to the point, however, is the fact that D. told a department social worker she lived with mother and Scarlet during her first

³ The court did not make an express finding regarding D.’s place of residence. However, “[w]here the statute does not mandate explicit findings, and where substantial evidence supports the juvenile court’s order, findings may be implied.” (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1166.) Accordingly, we will presume the court impliedly found that D. resided with her mother at the time the department filed its petition.

interview. D. recalled that she had gone to dinner and the park with mother, R.H. and Scarlet the night prior to the interview. She also told the department that R.H. often stayed over at mother's apartment, and described several recent incidents of domestic violence between mother and R.H.

In keeping with the standard of review, we defer to the court's resolution of the conflicts in the evidence. We further conclude this evidence is sufficient to support the court's implied finding that D. resided with mother at the time the department filed the petition or shortly before the court made its removal order.

DISPOSITION

The order is affirmed.

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LAVIN, J.

WE CONCUR:

ALDRICH, Acting P. J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.